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FEDERAL COMMUNICATIONS COMMISSION
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July 10, 2000

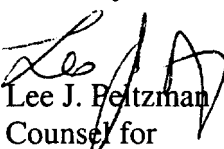
Ms. Magalie Salas
Secretary
Federal Communications Commission
Portals II - 12th Street Lobby
Filing Counter - TW-A325
445 - 12th Street, S.W.
Washington, DC 20554

Re: MM Docket No. 95-31
Petition for Clarification

Dear Ms. Salas:

Transmitted herewith, on behalf of Educational Communications of Colorado Springs, Inc., is an original and four (4) copies of its Petition for Clarification with respect to the Commission Report and Order in the above-referenced proceeding. Please contact the undersigned in the event the Commission has any questions with respect to this Petition for Clarification.

Sincerely,



Lee J. Peltzman
Counsel for
EDUCATIONAL COMMUNICATIONS OF
COLORADO SPRINGS, INC.

Enclosure

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Reexamination of the Comparative
Standards for Noncommercial
Educational Applicants

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MM Docket No. 95-31

To: The Commission

PETITION FOR CLARIFICATION

Educational Communications of Colorado Springs, Inc. ("ECCS"), by its attorney, hereby submits this Petition requesting that the Commission provide clarification with respect to its *Report and Order*, FCC 00-120 (April 21, 2000), issued in the above-referenced proceeding.¹ In support thereof, ECCS submits the following:

The *Report and Order* establishes a new point system for deciding between mutually exclusive noncommercial educational applicants. Several of the factors in the FCC point system are based on whether applicants have interests in other broadcast stations. The Commission determined that, to the extent possible, it would base its noncommercial attribution standards for consideration in applying the new point system on the commercial framework contained in Section 73.3555 of its rules.

To determine an NCE applicant's other interests, for purposes of applying an NCE point system, we will attribute the interests of the applicant, its parent and its subsidiaries, their officers and members of their governing boards. This standard is similar to commercial attribution standards in which directors, officers and voting stockholders in a commercial entity have attributable interests. *See* 47 C.F.R. § 73.3555 n.2. Thus, even if an NCE organization and its parent organization do not have any other

¹ A summary of the *Report and Order* was published in the Federal Register on June 8, 2000. 65 Fed. Reg. 36375 (June 8, 2000).

broadcast interests, we would also look to the interests of officers and directors, as we do for commercial applicants.

Id. at ¶ 77.

While the Commission has stated that it will utilize its existing attribution rules contained in Section 73.3555 to evaluate mutually exclusive noncommercial educational applicants, because these rules were formulated for commercial stations, the Commission needs to clarify how they will apply to NCE applicants. For example, Section 73.3555, note 2(h) states that the Commission will provide attribution relief for corporate officers and directors of entities engaging in more than one business as well as multi-faceted parent corporations where those individuals' duties and responsibilities neither directly nor indirectly relate to the activities of any broadcast licensee in which their entity has a cognizable interest. *See Attribution of Ownership Interests*, 97 FCC 2d 997, 1025 (1984). Subsequent to that FCC decision, the Commission has consistently recognized director recusal from a multi-faceted corporation's television and/or radio businesses as a basis for relieving directors of that company from attribution. *See CBS, Inc.*, 11 FCC Rcd ¶ 109-110 (1995) (directors are relieved from any attributable interests arising from their director positions at companies whose primary businesses are other than broadcasting so long as they recuse themselves from all matters that involve and/or implicate those companies' broadcast businesses); *Telemundo Group, Inc.*, 10 FCC Rcd 1104, ¶ 26 (1994); *Viacom, Inc.*, 9 FCC Rcd 1577 ¶¶ 10, 12 (1994) (director relieved of attributable interest in company because his duties and responsibilities as a director of the company were wholly unrelated to operation of the media business).

The nature of noncommercial educational broadcasting is such that, unlike commercial broadcasting, multi-faceted corporations do not often acquire networks of NCE stations. However, there are cases in which an officer or director of an NCE applicant sits on the board of

a university or church, whose primary mission is distinct from broadcasting, but which may own one or more broadcast stations. In such instances, that officer or director should be relieved from any attributable interest arising from his position as a director or trustee on the university or church board so long as he or she is willing to recuse themselves from all matters that involves and/or implicates those entities' broadcast businesses.

The reason for this exception is obvious. Clearly, the primary business of a university or college is to educate, not to operate a broadcast station. Similarly, the primary business of a church is distinct from broadcasting. Where individuals' duties and responsibilities neither directly nor indirectly relate to the activities of the broadcast licensees in which their universities or churches have a cognizable interest, those individuals should not be attributed with an ownership interest "by association." *cf Attribution of Ownership Interests*, 97 FCC 2d at 1025. Thus, eligible officers and directors of NCE applicants should be accorded exemption from attribution upon submission by the applicant, at the appropriate time when it submits other applicant documents, of the individual's name, his or her full title and description of their duties and responsibilities along with an explanation of why that person should not be attributed an interest. *Id.* Such treatment would be consistent with the Commission's current manner of handling waiver of its attribution rules in commercial cases.

Similarly, as previously noted by the Commission in its *Report and Order*, the applicant's governing documents should include an appropriate safeguard. In this case, the safeguard would state that, in the event the individual in question no longer recuses themselves from the university or church board with respect to matters involving and/or implicating those entities' broadcast stations, that officer or director must immediately resign from the NCE applicant's board.

It would violate fundamental tenants of substantive due process for the Commission to permit a waiver mechanism for large commercial conglomerates desiring to be free of attribution while failing to accord similar treatment to NCE applicants. *See Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965). Therefore, the Commission should clarify its policy to make it clear that noncommercial applicants, like commercial broadcasters, may in certain cases be eligible to obtain exemption from attribution.

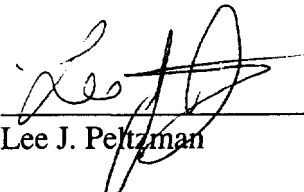
Additionally, whatever the Commission decides to do with respect to clarifying its attribution policy with respect to noncommercial interests, the Commission should make its policy known by issuing its reconsideration of its *Report and Order* prior to setting a date for filing amendments at the FCC and amending an organization's governing documents. Applicants should not have to guess what policy the Commission will ultimately adopt when amending their organizational documents. At the same time, given the ongoing freeze, ECCS requests that the Commission expedite its consideration of Petitions for Reconsideration and Clarification of the *Report and Order* in this proceeding.

Accordingly, in view of the above, ECCS respectfully requests that this Petition be granted.

Respectfully submitted,

EDUCATIONAL COMMUNICATIONS OF
COLORADO SPRINGS, INC.

By:



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Its Attorney

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